

State of California

Franchise Tax Board-Legislative Services Bureau

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Legislative Change No.

99-40

Bill Number: SB 94

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Chapter Number: 99-931

Laws Affecting Franchise Tax Board:

Revenue and Taxation Code Sections 17053.5, 17085.7, 18533, 18534, 18624, 18673, 19008, 19034, 19041, 19045, 19052, 19064, 19067, 19084, 19109, 19116, 19117, 19187, 19226, 19236, 19323, 19443, 19504, 19504.5, 19504.7, 19542.3, 19546.5, 19705, 19717, 21013 and 21016.

Date Filed with the Secretary of the State: October 10, 1999

SUBJECT: Taxpayers' Bill of Rights of 1999

Senate Bill 94 (Chesbro), as enacted on October 10, 1999, conformed, with some modifications, to 22 selected provisions of the Taxpayer Protections and Rights contained in the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Reform Act).

In addition, SB 94 deleted obsolete refund provisions related to the renter's credit, provided relief for employees whose employers withheld delinquent taxes from their pay, but failed to remit the amounts to the Franchise Tax Board (FTB), and provided FTB administrative authority to compromise a tax debt.

This act will not require any reports by the department to the Legislature.

Specifically, SB 94 made the following changes to California law:

Amended Section 17053.5 to delete obsolete language that is no longer necessary because the renter's credit, as reinstated by AB 2797 (Stats. 1998, Ch. 322), is not refundable.

Operative for taxable years beginning on or after January 1, 1998.

Added Section 17085.7 to provide an exception to the 2½% early withdrawal penalty for qualified retirement plans or Individual Retirement Accounts (IRAs) subject to levy by FTB. This provision only applies if the plan is levied.

Operative for distributions made after December 31, 1999.

Amended Section 18533 to conform, with modifications, to the innocent spouse provisions of the IRS Reform Act, including the separate liability election. Modifications to the IRS Reform Act would (1) send appeals of FTB innocent spouse determinations to the Board of Equalization rather than Tax Court and (2) expand the provision requiring FTB to provide 30-day notice to the other spouse to apply to assessments as well as underpaid self-assessed tax so that the other spouse may appeal an innocent spouse determination.

Bureau Director

Johnnie Lou Rosas

Date

10/28/1999

Operative for any liability for tax arising after the effective date (October 10, 1999) and any liability for tax arising on or before the effective date, but remaining unpaid, as of that date.

Amended Section 18534 to allow FTB to grant equitable relief to an innocent spouse as the facts and circumstances warrant.

Operative for any liability for tax arising after the effective date (October 10, 1999) and any liability for tax arising on or before the effective date, but remaining unpaid, as of that date.

Amended Section 18624 to allow a tax preparer to use on the state return any identifying number the IRS prescribes as the identifying number of the return preparer.

Operative on the effective date (October 10, 1999).

Added Section 18673 to provide relief to an employee whose employer withheld delinquent taxes from the employee's pay, pursuant to an earnings withholding order (EWOT) from FTB, but failed to remit the amounts to FTB. Specifically, this act:

- Eliminates the taxpayer's liability for the unremitted amount by allowing FTB to credit the taxpayer's account for the unremitted amount.
- Holds the employer liable for the unremitted amount by allowing FTB to administratively assess an amount equal to the unremitted amount against the employer, without a civil action.
- Preserves the employer's protest and appeals rights in the event the employer disputes the records of the taxpayer. Collections would be pursued from the employer only after the NPA is final and due and payable.
- Stays collection against the taxpayer for the amount at issue for the period between the time that FTB determined a failure to remit and the employer's NPA is either final and due and payable, withdrawn or revised, and the taxpayer notified thereof.
- Provides FTB with a seven-year statute of limitation for making the proposed assessment (from the date the employer first failed to remit) in order to provide the taxpayer with ample time to find out the employer failed to remit and bring the matter to the FTB for investigation.
- Precludes the taxpayer from collecting another amount equal to the credit through a bankruptcy proceeding or other remedy.

Operative for determinations made by FTB on or after the effective date (October 10, 1999), where the unremitted amounts were withheld no earlier than seven years before FTB mailed its deficiency assessments.

Amended Section 19008 to create an independent departmental review process when an offer of an installment agreement (OIA) is rejected. The Taxpayers' Rights Advocate will establish the procedures for the review (this process is not subject to the APA). During the period the OIA is pending approval or being reviewed, no levy may be issued by FTB. This provision does apply to informal payment arrangements. The prohibition on levies applies to initial OIA and related appeals only. At the discretion of the FTB, the prohibition may apply to offers made after

the rejection/appeal of the initial OIA. Rejections of OIAs are not to be routinely reviewed; a review will be conducted only upon taxpayer request.

Operative for any proposed installment agreement submitted after the effective date (October 10, 1999), except the prohibitions related to levies during review of rejections of OIAs are operative for any proposed installment agreement submitted after December 31, 2000.

Amended Section 19034 to require FTB to provide the last date a taxpayer may protest a notice of proposed assessment (NPA). Failure to include the date would not make the NPA invalid.

Operative for notices mailed after December 31, 1999.

Amended Section 19041 to specify that protests filed by the date specified on the NPA would be considered timely.

Operative for notices mailed after December 31, 1999.

Amended Section 19045 to require FTB to provide the last date a taxpayer may file an appeal on a notice of action (NOA). An appeal filed by the date specified on the NOA would be considered timely.

Operative for notices mailed after December 31, 1999.

Repealed Section 19052 since the renter's credit is no longer refundable.

Operative for taxable years beginning on or after January 1, 1998.

Amended Section 19064 to conform to the IRS Reform Act provision relating to motions to quash. In the absence of resolution of any subpoenaed person's (rather than only a third-party record keeper's) response to a subpoena (motion to quash), the statute of limitations (SOL) for making assessments would be suspended for the person whose liability is related to the subpoena.

Operative for any subpoena served after the effective date (October 10, 1999).

Amended Section 19067 to require FTB to inform taxpayers of their right to refuse to extend the SOL or the right to limit the extension to a particular period of time. The notice must be provided to the taxpayer each time FTB requests an extension.

Operative for requests made after December 31, 2000.

Amended Section 19084 to require FTB's Chief Counsel (or delegate) to personally approve (in writing) the issuance of jeopardy assessments, termination assessments or levies thereon.

Operative for taxes assessed and levies made after the effective date (October 10, 1999).

Amended Section 19109 to require FTB to abate interest that would otherwise accrue if the FTB extends the due date for filing income tax returns and for paying income tax for any individual who incurred a disaster loss and is located in a

Presidentially declared disaster area or an area declared by the governor to be in a state of disaster.

Operative for disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

Added Section 19116 to suspend the accrual of interest and penalties after 18 months unless FTB sends the taxpayer a notice and demand of payment of tax within 18 months following the later of (1) the original due date of the return (regardless of extensions) or (2) the date on which a timely return is filed.

The suspension applies only to individuals who file a timely tax return. The suspension does not apply to the failure to pay penalty, in the case of fraud or with respect to criminal penalties.

Interest and penalties resume 15 days after the FTB sends notice and demand for payment of tax to the taxpayer.

Special rules apply to taxpayers required to report (1) a change or correction by the Commissioner of the IRS or other officer of the United States or other competent authority or (2) an amended return filed with the Commissioner of the IRS. For these taxpayers, accrual of interest is suspended as follows:

- If the taxpayer or IRS notifies FTB of the changes within six months of the final federal determination date, interest is suspended for the period beginning one year from the date the taxpayer or the IRS notifies FTB of the final federal determination, until 15 days after FTB sends notice to the taxpayer.
- If the taxpayer or IRS notifies FTB of the changes after six months from the final federal determination date, interest is suspended for the period beginning two years from the date the taxpayer or the IRS notifies FTB of the final federal determination, until 15 days after FTB sends notice to the taxpayer.

Thus, FTB will have either one or two years from the date the taxpayer or the IRS notifies the department of the final federal determination to issue a notice before interest is suspended.

Operative for taxable years ending after the effective date (October 10, 1999).

Added Section 19117 to require FTB to include a description of the interest computation and the code section imposing the interest with notices sent to individuals. A detailed computation of the interest must be provided if requested by the taxpayer. This provision codifies current practice.

Operative for notices issued after December 31, 2001.

Added Section 19187 to require notices imposing a penalty to include the name of the penalty, the IRC or RTC section imposing the penalty, and a description of the penalty. A computation of the penalty must be provided if requested by the taxpayer. This provision codifies current practice. This provision also requires supervisory approval of all non-computer-generated penalties except failure to file, failure to pay or failure to pay estimated tax penalties. However, penalties based upon a federal audit do not require supervisory approval.

Operative for notices issued and penalties imposed after December 31, 2001.

Added Section 19226 to allow third parties (e.g., nominees, transferees) whose property is subjected to a lien to post a cash deposit or bond equal to the value of the state's interest in that property, as determined by FTB, and obtain a release of the lien. The Taxpayers' Rights Advocate is required to establish procedures for an independent departmental administrative review (not subject to the formal APA requirements) of the property value determination, if requested by the third party. The taxpayer has 60 days to request a review with respect to the value of the property subject to the lien. The deposit or bond subsequently must be refunded or applied to the tax debtor's account.

Operative on the effective date (October 10, 1999).

Added Section 19236 to require FTB to investigate the status of the property subject to levy as prescribed before issuing a warrant to seize or sell property. In addition, this section generally prohibits FTB from selling principal residences for liabilities of \$5,000 or less and requires FTB to obtain assistant executive officer (or delegate) approval before levying on a taxpayer's tangible personal property or real property (other than rented real property) used in a trade or business. This generally codifies FTB's current practices except the sale of any dwelling, not only the principal residence of the tax debtor, would continue to require a court order as provided under the CCP.

Operative for any warrant issued on or after the effective date (October 10, 1999).

Amended Section 19323 to codify FTB's practice of notifying the taxpayer of the specific reasons for disallowing, or partially disallowing, a refund claim.

Operative for disallowances after April 7, 2000 (the 180th day after the effective date of October 10, 1999).

Added Section 19443 to provide FTB administrative authority to compromise a tax debt similar to the IRS's current offers in compromise authority. For the smaller compromises (reductions in tax of \$7,500 or less), the executive officer and chief counsel, jointly, may compromise the debt or delegate the authority to others within the department. For those cases in which the reduction in tax exceeds \$7,500, the FTB, itself, has the authority to compromise the debt upon recommendation by staff. However, for those cases in which the reduction in tax exceeds \$7,500, but is less than \$10,000, the FTB, by resolution, may delegate to the executive officer and chief counsel, jointly, its authority to compromise the debt. A public record will be placed on file, comparable to those required by laws governing EDD and IRS offers in compromise and FTB's settlement procedure. The record will include a summary statement as to why the compromise is in the best interest of the state.

The compromise may be rescinded in the event of a default on the terms of the agreement, or if any person conceals property or generally withholds or falsifies any records with respect to the taxpayer's financial condition in conjunction with a compromise.

Operative on the effective date (October 10, 1999) without regard to the taxable or income year at issue.

Amended Section 19504 to codify current practice by prohibiting FTB, when examining a return, from using financial status or economic reality examination techniques to determine unreported income. However, allows the use of these techniques if FTB has reasonable indication of unreported income.

Operative for examinations beginning on or after the effective date (October 10, 1999).

Added Section 19504.5 to prohibit FTB from issuing a subpoena in a civil action for any portion of any third-party tax-related computer source code unless specified requirements are satisfied. Specific protections are provided for disclosure and improper use of trade secrets and other confidential information related to computer programs and source code in the possession of the FTB as a result of an examination of any taxpayer. Includes computer source software or source code information in the disclosure protections. Specifies that software acquired or developed for internal use by FTB is not included under these protections.

Applies to subpoenas issued, and software acquired after the effective date (October 10, 1999). Special rules are provided for software acquired on or before the effective date.

Added Section 19504.7 to require FTB to issue a notice to taxpayers before contacting third parties with respect to determinations or collection of tax liability, which may include filing enforcement. The notice applies to contacts made during the 12 months following the notice. If contacts are to be made after that 12-month period, another notice must be issued prior to the later contacts. Record of contacts must be provided upon taxpayer request made within 60 days following the 12-month period. Notification does not apply to contacts authorized by the taxpayer, where notice would jeopardize collection of tax, result in reprisal, or for criminal investigations.

Operative for contacts made after April 7, 2000, (180 days after the effective date of October 10, 1999).

Added Section 19542.3 to make it either a misdemeanor or a felony, at the court's discretion, to willfully divulge or make known software obtained by subpoena to any person. If convicted, the offense is punishable by up to \$5,000 fine or imprisonment in the county jail not to exceed one year, or in state prison not to exceed five years, or both.

Operative on the effective date (October 10, 1999).

Added Section 19546.5 to allow any person who has or had access to return or return information to disclose that information to a California legislative committee if the whistleblower believes the information relates to evidence of possible misconduct or taxpayer abuse.

Operative on the effective date (October 10, 1999).

Amended Section 19705 to add false, fraudulent or deceptive conduct in connection with offers in compromise to crimes subject to penalty.

Operative for offers made on or after January 1, 1999.

Amended Section 19717 to conform, with modification, to federal changes relating to awarding costs and fees. Specifically, this act:

- Raised the hourly rate on attorney's fees for court proceedings from \$110 to \$125 and added that difficulty of issues and unavailability of local tax expertise would justify a higher rate. (The hourly rate indexing start date was changed from 1999 to 2001.) Also, permitted reasonable attorney fees to attorneys who represent taxpayers for a nominal fee.
- Provided that when a court is determining whether the position of the FTB was substantially justified, the court can consider whether FTB lost in any California Court of Appeal in another district in a published case involving substantially similar issues.

Operative for costs incurred and services performed after April 7, 2000 (more than 180 days after the effective date of October 10, 1999).

Amended Section 21013 to conform, with modification, to federal changes relating to awarding costs and fees. Specifically, this act changed the starting point after which reasonable costs can be awarded from the date an appeal is filed to the date of the notice of proposed deficiency assessment. The act also permitted reasonable attorney fees to persons who represent taxpayers for a nominal fee.

Operative for fees and expenses incurred after April 7, 2000 (more than 180 days after the effective date of October 10, 1999).

Amended Section 21016 to codify current practice and generally conform to the federal provision by requiring FTB to immediately release a wage levy if the tax is not collectible because it is no longer due and payable. However, it does not apply to discharged accounts, in which case, levies on salaries or wages are not released until satisfied.

Operative for salary or wages subject to levy on or after the effective date (October 10, 1999).